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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,248	08/20/2003	Mark Timothy Bennett	102792-158	7552

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EXAMINER

KUMAR, PREETI

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,248

Applicant(s)

BENNETT ET AL.

Examiner

Preeti Kumar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 12-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/20/03, 8/11/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election with traverse of group I, claims 1-7 and 12-21 in the reply filed on 07/22/2006 is acknowledged. The traversal is on the ground(s) that subject matter of Group I and Group II claims is sufficiently technically proximate wherein Applicant believes that the Examiner may collectively search the search matter of all of the present claims in a single search which would not impart an undue burden on the Examiner. This is not found persuasive because the two inventions require two separate searches and the restriction is proper because examining a composition and a process within one application is undue burden on the examiner.
2. The requirement is still deemed proper and is therefore made FINAL.
3. Claims 8-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 22, 2006.

Non-Final Rejection

4. Claims 1-7 and 12-21 are pending.
5. Claim 1 is independent.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-4, 12-15 and 17-21 are rejected under 35 U.S.C. 102(b) as anticipated by Casey et al. (US 4,678,658).

Casey et al. teach an aerosol spray for use in disinfecting a surface for personal use, such as a public restroom facility or telephone. The composition and delivery of the composition provides for the placement of a spray of disinfectant which includes a dye. The dye disappears as the spray effects the germicidal activity of the disinfectant. The composition is also rapidly drying, so that the dye disappears as well as the disinfecting composition leaving the surface dry. See abstract.

Casey et al. teach that the composition exhibits antimicrobial efficacy against Herpes simplex virus type 2 (HSV2) as well as bacteria such as *Staphylococcus aureus*,

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Neisseria gonorrhoeae, enteric bacteria *Escherichia coli* 011K58 (Pathogenic), *Shigella sonnei* and *Salmonella typhimurium*, and the yeast *Candida albicans*. See col.1,ln.55-60.

In table 5, in col.6, Casey et al. illustrate a biocide propellant comprising 51.62wt.% isopropanol and 27.52 wt.% deionized water. In example 1, col.3, Casey et al. teach that the pH of the composition varies between 8.8 and 12.53.

Accordingly the teachings of Casey et al. anticipate the material limitations of the instant claims.

10. Claims 5-7, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casey et al. (US 4,678,658) in view of Coates et al. (EP 0 099 209).

Casey et al. are relied upon as set forth above.

However, Casey et al. do not teach the claimed quaternary ammonium compound recited by the instant claims 5-7 and do not specifically teach the claimed ethanol of claim 16.

Coates et al. teach an aqueous disinfectant solution having residual biocidal activity comprising 60-80% C1-C4 alcohol, preferably ethanol or isopropanol. See abstract. Coates et al. teach that a quaternary ammonium halide addition to the composition will be useful in cleaning hard surfaces in hospital since the composition will show good biocidal activity after evaporation of the alcohol. See abstract and page 4,ln.5-10. Regarding claim 6, although Coates et al. preferably teach the utility of quaternary ammonium chlorides, the teachings of Coates encompasses all quaternary ammonium halides and thus encompasses the material limitation of the instant claim.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the antimicrobial composition of Casey et al. with the quaternary ammonium compound and ethanol as recited by the instant claims, because the teachings of Coates et al. provide motivation to one of ordinary skill to arrive at an antimicrobial composition comprising ethanol since Coates et al teaches the equivalence of ethanol with isopropanol taught by the primary reference of Casey et al.

Furthermore, it would have been obvious to one of ordinary skill in the art to arrive at an antimicrobial composition comprising quaternary ammonium halides since Coates et al. teach that the quaternary ammonium halide will provide good biocidal activity after evaporation of the alcohol within the antimicrobial composition.

One of ordinary skill in the art, would have been motivated to combine the teachings of Casey et al. with that of Coates et al. because both teach the analogous art of antimicrobial detergent composition.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 571-272-1320. The examiner can normally be reached on M-F 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas Mc Ginty can be reached on 571-272-1029. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Preeti Kumar *PK*
Examiner
Art Unit 1751

PK

Douglas McGinty
DOUGLAS MCGINTY
SUPERVISORY PATENT EXAMINER

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